



**CALIFORNIA
HIGH-SPEED RAIL
AUTHORITY**

MEMORANDUM

**TO: Chairman Pringle and Authority Board Members
Roelof van Ark, Chief Executive Officer**

FROM: Steve Schnaidt

DATE: 7/2/10

RE: Legislation Update

Background

The Authority's staff regularly presents an information/action item summarizing high-speed train-related legislation introduced and pending in the current legislative session. In 2009, the first year of the 2009-10 Legislative Session, ten (10) bills were identified at one time or another as directly affecting or having the potential to affect in different ways the high-speed train project or related intercity passenger rail operations.

The initial 2009-10 legislative report noted that the Authority likely would be asked for its views, if any, on the various measures as the bills were scheduled for legislative policy and fiscal hearings and began their progress through the legislative process. The April 2009 and subsequent monthly reports highlighted and updated the provisions of the bills relevant to the high-speed train project and recommended to the Board for its consideration, formal positions on several bills. The report also recommended that the Board continue to monitor the status and progress of the identified bills whether or not a formal position was adopted. After discussion at its May meeting, the Board approved the staff report's recommended positions and action on several bills and directed staff to keep board members informed of important changes and developments in the language or status of the bills.

The Legislature has reached the deadlines for policy committee consideration and action on legislation for this year and this legislative session as well as being several days past the

deadline for adoption of the Budget Bill for 2010-11. The essential deadlines and dates remaining in the legislative calendar for 2010 are the following:

- July 2: Last day for *policy* committees to report bills (generally those from the other house). Summer Recess begins this day (through August 2), if Budget has been enacted.
- August 13: Last day for *fiscal* committees to meet and report bills to the Floor.
- August 16-31: Floor session only. Committees may not meet unless granted a waiver to do so.
- August 31: Last day for any bill to be passed. Final Recess for 2009-10 session begins at day's end.
- September 30: Last day for Governor to sign or veto bills.

Discussion

The Assembly and Senate policy committees must complete action on legislation at the end of June/start of July in order to meet the July 2, 2010 deadline for hearing and reporting bills of either house. Consequently, bill hearings by almost all policy committees were scheduled for the last two weeks of June. Bills with fiscal implications are being heard on a weekly basis by the respective appropriations committees of each house, activity that will continue after the summer recess – should there be one – up until August 13th. This year, as has been the case in many recent years, action and work continues simultaneously on the development and approval of a state budget act for the next fiscal year. At the time of preparation of this report, the Assembly and the Senate had not resolved their differences with respect to the Authority's budget appropriation for 2010-11 and accompanying budget expenditure control language.

The transportation policy committees of the two legislative houses met during the last week of June and acted on several bills pertaining to the HST project and the Authority. Those bills are included in this report. Some of the bills were amended in committee but have not yet appeared in print in their new forms due to a lag in the preparation and inclusion of the formal amendment language. This report incorporates the latest amendments and committee actions on the bills even though some of the bills are not yet in print in their revised forms.

Recommendations:

Authority staff proposes that the Authority continue its prior approved positions on specific high-speed train legislation that has not changed and consider whether to take positions on new legislation or revised positions on any measures that have been substantially altered, as indicated. Staff recommends that the Authority instruct the Chief

Executive Officer to communicate any new or changed Board positions to the appropriate committees and respective authors of the bills as necessary. If there are no Committee or Board additions or changes, then no further action is necessary:

1. **AB 153 (Ma) as amended 6/21/10** – *Land use planning and vehicle mitigation fees.* (Formerly—*Miscellaneous operations and duties of the High Speed Rail Authority.*)

The bill, as introduced and sponsored by the Authority, deleted language made obsolete by the passage of AB 3034 (Prop. 1A) in 2008 regarding a financial plan and made several technical and clarifying changes to statutes governing the powers duties of the Authority (for example, made a technical, clarifying reference that the Board is the “governing authority” of the Authority in cases of eminent domain, clarified that the Authority’s existing eminent domain powers exempt the Authority from having to rely on the state Public Works Board to acquire property, and deletes obsolete contingency language and updated provisions requiring the Authority to prepare construction plans for the HST system). The bill also provided that the Authority may hire its own legal counsel (and continue to use the services of the Attorney General, or both), similar to provisions for the California Transportation Commission.

The current version, as amended 6/21/10, no longer relates to the Authority or the high-speed train project. The bill’s original provisions recently were stripped from the bill and replaced by language related to sustainable communities, regional blueprint, land use and planning, and procedures for the implementation of voter-approved vehicle registration mitigation fees for developing land use strategies and reducing the use of motor vehicles.

Bill history/status: Approved by Assembly Transportation Committee on 3/23/09, 9-0; approved by Assembly Judiciary Committee 7-2 on 4/14/09; approved by Assembly Appropriations Committee 11-5 on 4/29/09; approved by Assembly 53-16 on 5/11/09. Sent to Senate; double-referred to Transportation and Housing and Judiciary Committees. Set for hearing in Transportation and Housing on 6/23/09; put over/postponed to later hearing by Committee, with proposed committee amendments presented to the author. Amended 6/21/10 to change subject matter and create a new bill unrelated to high-speed trains.

Current approved position (re prior subject matter and bill contents): As sponsor of the bill, request that author cease further efforts to secure passage of the measure at this time. (A July 20, 2009 letter was sent to author requesting this.)

Note: As amended, the bill is moot with respect to the Authority and high-speed train project.

- 2. AB 289 (Galgiani) as to be amended** - *Authority exempt staffing positions and federal ARRA funds. Authorizes the Governor to appoint six additional exempt employees to the Authority to serve in specific positions and establishes a process for determining their compensation. Authorizes the Authority to expend federal ARRA funds upon legislative appropriation in accordance with federal guidelines and identifies the corridors for the funds' use, authorizes the expenditure of federal PRIIA funds in specific corridors, and requires the Authority to report to the Legislature on the plan developed with the Federal Railroad Administration for the use of the federal funds.*

Proposition 1A (AB 3034), the Safe, Reliable High-Speed Passenger Train Act for the 21st Century, was approved by state voters on November 4, 2008. Prop. 1A controls the expenditure of the bond funds and imposes conditions on the use of the funds for development and construction of the high-speed train (HST) project, including that no more than 50% of the construction cost in any corridor or usable segment can come from the bond funds. Prop. 1A also requires the Authority to pursue and obtain other private and public funding, including federal funding for the HST project. Separately, the revised 2009-10 Budget Act appropriation for the Authority provides that the state appropriation for the Authority's operating and project expenses may be reduced and replaced (substituted) by an equivalent amount of any federal stimulus funds made available through the American Recovery and Reinvestment Act (ARRA).

The bill, as it will be amended (not yet in print), authorizes the Governor, upon the recommendation of the executive director, to appoint six additional employees to the Authority who would be exempt from civil service, to serve at the pleasure of the executive director. The appointments are limited to those for chief program manager, regional director(s), chief financial officer, and director of risk management and project controls. The bill authorizes the Authority to establish the compensation of the new exempt positions, as approved by the Department of Personnel Administration, in an amount reasonably necessary to attract and persons of superior qualifications and after conducting an independent salary survey.

The bill requires the state's allocation of \$2.25 billion in federal ARRA funds, upon legislative appropriation, to be used consistent with the bond act and the provisions of the bill. Requires the Authority to work with the FRA to create a plan to expend the federal funds and submit a copy of the plan to the Department of Finance and legislative committees, and references the project corridors in which the funds may be used, consistent with the Authority's application and award of ASRRA funds. The bill requires the same actions and sets the same conditions for the use of any federal Passenger Rail Investment and Improvement Act (PRIIA) funds granted to the state.

Bill history/status: Approved by Assembly Transportation Committee 13-0 on 4/27/09; approved by Assembly 72-3 on 5/18/09. Sent to Senate and referred to Senate Environmental Quality Committee; hearing pending. Author's amendments on 8/17/09 to delete former contents and change subject matter. Re-referred to Senate Committee on Rules. Referred to Senate Transportation and Housing Committee; approved by Transportation and Housing 8-0 on 6/29/10. Referred to Senate Appropriations Committee.

Current approved position: Monitor and work with author

3. AB 619 (Blumenfield) as to be mended – HST project bidder disclosure regarding World War II deportations.

As introduced, the bill did not pertain to the HST project or the Authority. It would have required notification to the Legislature by the Department of Transportation on any transportation project that would be delayed beyond its completion date due to state cash flow or other funding issues, if the delay would place federal funds at risk.

The bill as amended on 6/17/10 became an entirely new measure requiring that bidders for high-speed train project contracts, as part of their bid application, be required to disclose any involvement in certain activities in World War II related to the deportation of individuals to extermination camps, work camps, or concentration camps or prisoner-of-war or similar camps. The bill established requirements and procedures for certifying whether the bidding entity had any direct involvement in deportation activities and authorized the Authority to disqualify an entity from bidding on a contract based on the entity's disclosures. The bill also would have authorized civil penalties to be imposed on the entity if it submitted a false certification to the Authority when bidding.

The current bill, as it will be amended (not yet in print), requires any entity applying for a contract with the Authority to affirmatively certify in advance of a formal bid, whether the entity 1) had any direct involvement in concentration camp or related camp deportation activities during January 1, 1942 to December 31, 1944, 2) has any records related to any such deportations, 3) has taken any remedial action or provided restitution to victims, and 4) chooses to describe any mitigating circumstances in this regard.

The bill requires the Authority to acknowledge any deportation disclosure information when awarding contracts and requires the Authority to note the

importance of complying with the disclosure requirements. The bill requires that any bids or proposals for high-speed train goods or services contracts must conform to the transportation disclosure requirements.

Under the bill, “direct involvement” means ownership or operation of the trains on which persons were deported to extermination camps, work camps, etc., during the specified three-year period 1942-1944.

Bill history/status: Introduced 2/25/09. Referred to Assembly Transportation Committee and passed 13-0 on 4/27/09. Approved by Assembly 73-0 on 5/14/09 and sent to the Senate. Referred to Senate Transportation and Housing Committee 5/21/09. Amended 6/17/10 to change subject matter. Approved by Transportation and Housing on 6/28/10; pending amendment and referral to Senate Appropriations Committee.

Current approved position: None

4. **AB 1375 (Galgiani) as amended 6/22/10** – *(Formerly, created a Department of Railroads within the Business, Transportation and Housing (BTH) Agency to develop and administer the high-speed train project as the successor agency to the Authority for most of the purposes and duties of the Proposition 1A bond act and for other activities related to the project.) Currently, authorizes the Governor, on the recommendation of the executive director, to appoint six additional exempt employees to the Authority for specific purposes and establishes a process for determining their compensation.*

The bill formerly provided that the Authority would continue in existence to advise the BTH Secretary and Director of the Department of Railroads concerning high-speed rail matters, to annually adopt a 6-year high-speed train program for submission to the Governor and the Legislature, review and adopt the annual report of the new department, establish the compensation of exempt executive employees of the department added by the bill and would constitute the department’s “governing authority” for purposes of resolutions of necessity for property acquisition. The prior version of the bill also created a new Department of Railroads that would succeed to most of the current powers and duties of the Authority and would be administered by a director appointed by the Governor. The Governor would appoint up to 10 exempt executive employees to staff the department, who would serve at the pleasure of the director. The department would submit an annual report on the progress of the high-speed train program to the Authority for adoption and subsequent submittal to the Legislature. The bill made the new department the successor agency of the Authority for purposes of Proposition 1A and related statutory requirements.

The current bill, amended 6/22/10, no longer pertains to a restructuring of the Authority or creation of a new department. Instead, the bill now authorizes the Governor, upon the recommendation of the executive director, to appoint six additional exempt employees to the Authority. The appointments are limited to those for chief program manager, regional director(s), chief financial officer, and director of risk management and project controls. The bill authorizes the Authority to establish the compensation of the new exempt positions, as approved by the Department of Personnel Administration, in an amount reasonably necessary to attract and persons of superior qualifications and after conducting an independent salary survey. (Note: the same provisions are included in AB 289.)

Bill history/status: Approved by Assembly Transportation Committee 9-4 on 4/27/09; referred to Assembly Appropriations Committee. Approved by Assembly Appropriations Committee 12-5 on 1/21/10. Approved by Assembly 42-20 on 1/27/10 and sent to Senate. Referred to Senate Transportation and Housing Committee. Pending hearing; hearing postponed by committee 6/24/10.

Current approved position: Monitor

5. **AB 1747 (Galgiani) as amended 4/14/10** -- *Job creation as a contract award factor. Authorizes the Authority to consider the creation of jobs in California when awarding major contracts, including those for purchasing high speed trains and supplies.*

The bill would add to the Authority's current powers and duties permission to consider, to the extent permitted by federal and state law, the creation of jobs in California when awarding major contracts, including, but not limited to, those for purchasing high-speed trains and related equipment and supplies. The bill is permissive; it allows but does not require the Authority to utilize California job creation as a contractual criterion.

The bill was amended 4/14 /10 to encompass the current provisions and now is essentially identical to the author's earlier AB 733 in 2009, a measure that was overwhelmingly approved by the Legislature but vetoed by the Governor. The veto message noted the merits of the measure but stated that it could result in unnecessary additional costs and delays and jeopardize the success of the project.

Bill history/status: Introduced 2/8/10; referred to Assembly Transportation Committee. Approved 13-1 on 4/5/10; referred to Appropriations Committee and approved 15-1 on 4/21/10. Sent to Assembly Floor and approved 66-0. Referred to

the Senate; pending assignment in Rules Committee. (The bill has missed the policy committee action deadlines.)

Current approved position: Monitor

6. **AB 1830 (Jones—formerly Galgiani) as amended 6/1/10** – *Rolling stock purchases. Requires the Authority to make every effort to purchase rolling stock and related equipment that are manufactured in California.*

The bill adds a requirement that the Authority shall make every effort to purchase high-speed train rolling stock and related equipment that are manufactured in California, consistent with federal law and any other applicable provision of state law.

The bill was amended 6/1/10 to change the author from Galgiani to Jones.

Bill history/status: Introduced 2/11/10 re electrical restructuring subject matter; amended to high-speed train provisions and referred to Assembly Transportation Committee 3/18/10. Approved 12-2 on 4/5/12 and referred to Appropriations Committee. Approved by Appropriations 12-4 on 4/21/10; approved by Assembly 53-22 on 6/3/10. Sent to Senate; referred to Transportation and Housing Committee. Approved by Transportation and Housing 6-2 on 6/29/10; referred to Senate Appropriations Committee.

Recommended position: Monitor

7. **AB 2121 (Harkey) as amended 5/28/10** – *Requires the Authority to annually adopt and submit to the Legislature and Governor a 6-year high-speed train program, and annually report on the progress made on the high-speed train program and on a detailed financing plan to pay for the construction of the high-speed train network.*

Section 1 of Article 16 of the California Constitution provides, among other things, that after passage of a bond act by state voters the Legislature may reduce the amount of the debt authorized by the bond law, provided that the reduced debt amount is not less than the amount of debt already contracted at the time of the legislated reduction.

The bill as introduced reduced the amount of bond indebtedness authorized by Proposition 1A to the amount of debt contracted as of January 1, 2011. Therefore, the high-speed train project would not have access to further state bond proceeds without a subsequent repeal or change to the proposed debt restrictions. The lack of

state funding and the resulting inability to match federal and other funding sources, likely would terminate activities toward the development of the high-speed train system in the state.

The bill was amended by the author to no longer affect high speed train bonds or the financing of the HST project. Author's amendments replaced the original provisions of the bill with all new language requiring the annual submittal of a 6-year high-speed train program and an annual project progress report to the Legislature. The new provisions are very similar to some of the reporting requirements proposed in AB 1375, as the latter measure was approved by the Assembly.

The latest amendments (5/28/10) clarify the contents of the proposed annual report, due December 1st, including progress on each segment, a baseline and projected budget for capital outlay and support for each segment, expenditures to date, a comparison of the current and projected timeline and milestones achieved for each segment, and a detailed financial plan for financing the project.

Bill history/status: Introduced 2/18/10; referred to Assembly Transportation Committee 3/4/10. Approved by Transportation Committee 13-0 on 4/27/10 and amended 4/28/10 to delete original provisions and incorporate new reporting subject matter. Placed on Appropriations Committee Suspense File 5/12/10; amended and approved 17-0 on 5/28. Approved by Assembly 76-0 on 6/2/10 and sent to Senate; pending assignment in Senate Rules Committee. (The bill has missed the policy committee action deadlines.)

Current approved position: Oppose

8. **SB 409 (Ducheny) as to be amended**– *Rail connectivity plans and HSRA activities. (Formerly, created a Department of Railroads in the Business, Transportation and Housing Agency, responsible for high-speed rail and several other current state rail programs.) Current language requires Senate confirmation of the Governor's appointees to the Authority, requires Caltrans to prepare a statewide 5-year rail connectivity plan in consultation with the Authority and other entities, and requires the Authority to adopt and submit a five-year high-speed train passenger program every two years.*

The re-drafted measure eliminated all of the original language related to the creation of a Department of Railroads that would have included the Authority, the

Caltrans Division of Rail and certain rail functions of the Public Utilities Commission. The bill was stripped of those restructuring provisions before leaving the Senate.

The bill, as to be amended, instead makes the Governor's five appointments to the Authority Board subject to confirmation by the State Senate.

The bill requires the Department of Transportation to prepare and submit to the Federal Railroad Administration a 5-year Strategic Rail Connectivity Plan for the state that focuses on linkages and feeder opportunities between high-speed and conventional intercity rail, commuter rail and rail transit. The plan will include information on the planning, capital investments and right-of-way needs of passenger rail lines in connection with highway system improvements needed to accommodate expanded rail services. The plan will be developed in consultation with the Authority and other agencies and will be subject to a public review and comment process administered by the California Transportation Commission.

The bill requires the Authority to submit to the Legislature and the Governor every two years, a 5-year high-speed rail passenger train program, including a listing of all capital improvement projects expected to require appropriation over the following 5 fiscal years. The report will include, for each project segment, specified information on permits and environmental studies, right-of-way acquisition activities, construction, engineering and related information.

Bill history/status: Heard in Senate Transportation and Housing Committee as an information item on 4/14/09. Rule waiver granted 5/28/09 allowed bill to be heard in policy committee after bill action deadlines. Approved by Senate Transportation and Housing Committee 10-0 on 6/9/09. Referred to Senate Appropriations Committee; set for hearing 7/23/09 pending rule waiver approval. Waiver granted; bill heard and placed on Senate Appropriations Committee Suspense File on 7/23/09. Approved by Senate Appropriations 13-0 on 8/4/09. Approved by Senate 32-0 on 1/28/10 and sent to Assembly. Referred to Assembly Transportation Committee; approved by Transportation Committee 11-0 on 6/28/10. Referred to Assembly Appropriations Committee.

Current approved position: Monitor

9. **SB 455 (Lowenthal) as amended 4/16/09** – *Operations and duties of the High Speed Rail Authority. Makes numerous conforming changes to statutory provisions and adds specific references to the Authority in statutes governing property acquisition activities and eminent domain. Adds additional Phase 1 project selection*

criteria and requires Senate confirmation of Governor's Board appointees. Requires the Authority to prepare an overall project schedule on a quarterly basis, approve a quarterly contract status report, and approve all contract amendments at board meetings.

The bill proposes many technical and conforming changes to the Authority's property acquisition powers and incorporates several changes to law regarding property management as suggested by the Authority's legal counsel. The bill clarifies that the Authority has independent authority parallel to that of Caltrans in these property acquisition, management and disposition activities and is not under the general property management scheme administered by the Department of General Services for other agencies.

The bill also makes several author-initiated substantive changes to the Authority and its operations: a) the Governor's 5 appointees to the Authority would be subject to Senate confirmation (prospectively); b) the Authority would have to consider additional project selection criteria for investments in Phase 1 of the HST project—including access to railroad stations and terminals, improvements to travel times, service reliability, safety, improved connections between the San Joaquin Valley and southern California and the Bay Area, etc., or some combination of them; c) the Authority would have to prepare an overall project schedule with delivery milestones and related information and present the report quarterly to the board and the Legislature; d) the board would have to approve quarterly a written report on the status of contracts for the previous quarter, and submit the reports to the Legislature; and e) the board would have to formally approve all proposed amendments to contracts, including contract change orders, accompanied by a written report explaining the changes.

Bill history/status: Approved by the Senate Transportation and Housing Committee 10-1 on 4/22/09; approved by Senate Appropriations Committee 9-4 on 5/27/09; Approved by Senate 32-5 on 6/2/09. Sent to Assembly. Approved by Assembly Transportation Committee 10-4 on 6/29/09; approved by Assembly Appropriations Committee 11-5 on 7/15/09. Referred to Assembly Floor Third Reading File; placed on Inactive File on 7/24/09. Notice of intent to remove from Inactive File 6/28/10. Pending on Senate Third Reading File.

Current approved position: Monitor

- 10. SB 964 (Alquist-Steinberg) as amended 6/30/10 – High speed rail workforce development.** *Requires the Authority to contract with the Employment Development Department to develop a labor market assessment of the workforce, skills and education needed to construct operate and maintain the HST system, and to develop*

options for workforce training programs to ensure the availability of the necessary workforce and skills.

The bill directs the Authority to execute a contract with the Employment Development Department (EDD) to collaboratively develop a labor market assessment of the workforce needs of the high-speed train project and assess the labor market's ability to supply the necessary skills, education and training to develop, construct, operate and maintain the train system. EDD would also develop a recommended strategy to ensure that workforce programs are available to facilitate the availability of a skilled, in-state workforce to carry out HST project tasks and responsibilities.

The bill requires the Authority and EDD to jointly form an advisory committee to advise the two agencies on the availability and potential availability of skilled labor, by region, to construct, operate and maintain the high-speed train system. The advisory committee would consist of the HSRA, the state's higher education institutions (all three systems), California Workforce Investment Board, State Department of Education, labor organizations, State Employment Training Panel and others as determined by the Authority.

The workforce assessment would have to be submitted to specified committees of the Legislature by January 1, 2012 and be incorporated in the Authority's biennial business plan. The bill appropriates \$500,000 from the Proposition 1A bond fund to pay for the required workforce assessment and development activities.

The 6/30/10 amendments direct the EDD to work cooperatively with the Mineta Transportation Institute and utilize the information and findings of the Institute's own research on workforce assessment. The bill requires the EDD to collaborate with the MTI and share information with it and consult with other current assessments of rail transit workforce development.

Bill history/status: Introduced 2/18/10; dual-referred to Senate Transportation and Housing Committee and Education Committee. Approved by Transportation and Housing 6-2 on 4/20/10; referred to Education Committee 4/22/10 and rereferred to Senate Appropriations Committee 4/26/10; placed on Appropriations Suspense File. Approved 7-2 on 5/27/10; approved by the Senate 23-11 and sent to Assembly. Referred to Assembly Transportation Committee; approved by Transportation Committee 9-5 on 6/28/10. Referred to Assembly Appropriations Committee.

Current approved position: Monitor

11. SB 965 (DeSaulnier) as amended 6/21/10 – Federal high-speed rail funds.

Requires the High Speed Rail Authority to expend federal ARRA funds awarded to it for development of projects on the high-speed train system, upon legislative appropriation and in compliance with Proposition 1A. Requires a report to the Legislature of any cooperative agreement with the FRA. Exempts from the bill and its reporting requirements the Transbay Transit Center project in San Francisco.

The bill requires the Authority to expend federal ARRA high-speed rail funds, upon appropriation by the Legislature, for purposes of developing projects along the high-speed rail network. The bill requires the Authority to take whatever actions are necessary to obligate and expend the federal funds to meet all applicable federal deadlines, to maximize job creation in the state as quickly as possible, to expedite completion of infrastructure projects that improve rail-highway safety, mobility and performance, and make the most efficient use of state Proposition 1A bond funds, including replacing state bond funds with federal funds to the extent possible to maximize the effectiveness of state funds. The bill requires the Authority to use the ARRA funds in a manner consistent with the requirements of Proposition 1A, including the proposition's peer review and funding plan submission provisions.

The bill requires the Authority, within 60 days of enactment of the bill or finalization of a cooperative agreement with the federal government for the use of the ARRA funds, whichever is later, to submit to the Legislature and Legislative Analyst an adopted expenditure plan for the federal funds with specified progress components and financial information.

The bill exempts from the above provisions the Transbay Transit Center project in San Francisco.

Bill history/status: Introduced 2/5/10; referred to Senate Transportation and Housing Committee; approved 8-0 on 4/13/10. Referred to Senate Appropriations; set for hearing 4/26/10. Approved 8-1 on 4/26/10 and sent to Senate Floor. Approved by Senate 26-8 on 4/29/10; sent to Assembly. Referred to Assembly Transportation Committee; approved by Transportation Committee 14-0 on 6/28/10. Referred to Assembly Appropriations Committee.

Current approved position: Monitor

